DOCKET NUMBER FAA-2001-8690

TO:
Docket Management System
U.S. Department of Transportation
Room PL-401
400 Seventh Street SW
Washington, DC
(Submitted via Internet at http://dms.dot.gov)

SUBJECT:
Notice of Proposed Rule Making,
National Parks Air Tour Management Act of 2000,
Docket Number FAA-2001-8690

FROM:
Don Steuter, Conservation Chair
Grand Canyon Chapter of the Sierra Club
812 N. 3rd Street
Phoenix, AZ 85004

DATE:
10 June 2001

Arizona's Grand Canyon Chapter of the Sierra Club, with more than 11,000 members, respectfully offers the following comments regarding the proposed codification of the National Parks Air Tour Management Act of 2000 (Public Law 106-181). The comments address the Notice of Proposed Rule Making (NPRM) and request for comments made by the FAA in the 27 April 2001 issue of the Federal Register (V66 #82 FR 21264).

We understand that the NPRM addresses tribal lands and units of the national park system in general, and does not address the Grand Canyon National Park (GCNP). However, our chapter has been involved in similar issues at GCNP for over a quarter of a century. We have acquired experience applicable to other federal lands that should be of interest to the National Park Service (NPS) and the Federal Aviation Administration (FAA).

Our goal is to help the NPS and the FAA establish rules 1) that are comprehensive enough to effectively protect resources on these federal lands, and 2) that do not create unintended burdens on aviation. Natural quiet is both a natural resource and a cultural resource, and therefore of importance in this process.

The definition of "commercial air tour operator" is critical. Our experience at GCNP is that many flights are de facto commercial air tour flights even when operators claim to be just transportation operators. Some operators have been quite effective in using this loophole. They advertise their flights as sightseeing flights then claim they are exempt from the sightseeing aircraft rules (e.g., paying air tour fees).

The NPRM is internally inconsistent in its definition and discussion of one of the criteria as to what constitutes a commercial air tour operation. Specifically, in the definition section, the phrase "A PURPOSE of the flight is sightseeing" is used (capitalization added for emphasis). In other sections, the phrase "THE PURPOSE of the flight is sightseeing" is used. It is clear to

us that “A PURPOSE” wording must be used. Operators would most likely claim that the purpose of the flights would be for some other primary purpose, such as transportation, if the “THE PURPOSE” wording is used.

It is essential that the NPRM wording be improved to preclude the possibility that the operators will pretend that the flights are not for sightseeing while the customers know the real purpose. The rules should be written so that a reasonable person (or a court) can evaluate if sightseeing is a significant part of the flight purpose, in which case the flight should be considered a sightseeing flight. If the purpose of the flight is claimed to not be sightseeing, then the flight should be directed around the park or tribal land if at all practical. As an example to illustrate a general principle, if a flight from Las Vegas to the Grand Canyon airport is not a sightseeing flight, then the flight path should be around the park rather than through the park.

Subject to the comments in the next paragraphs, our chapter supports the proposed 5000 foot above ground level (AGL) rule, coupled with the rule regarding a one mile lateral distance from any geological features, as part of the definition of a commercial air tour operation. Generally this will provide a realistic part of the air tour definition, especially in lands that are relatively flat. For instance, this most likely would provide a good definition near the Statue of Liberty.

However, the definition may need to be improved to be effective at other parks, especially parks that have significant elevation changes. Again we will use the Grand Canyon as an example of what may be applicable to other parks. If a flight progressed along a path 5000 feet AGL that was directly above the Colorado River, in many places it would be well over a mile from any geological features and but would be below the north rim of the canyon and just a few hundred feet above the south rim. Such a flight would clearly have sightseeing potential but would not legally be a sightseeing flight. While this is an example at GCNP, the principle is applicable to other parks (e.g., Yosemite).

We suggest that the wording be revised as follows: “Below 5000 feet above ground level, as measured from the highest point in the national park or tribal land, (except for the purpose … .” Alternately, we suggest less simple and less restrictive words, as follows: “Below 5000 feet above ground level, as measured from the highest ground point within the area under a cone formed by a line starting at a flight path point projected down 30 degrees from horizontal, (except for the purpose … .” Over flat lands, these definitions and the NPRM definition would come out the same. The proposed wording would more realistically determine what a commercial air tour operation is in large scale parks with significant altitude changes.

The FAA should immediately enforce the no-new-entrants wording of the National Parks Air Tour Management Act. This should include all operators that state that they are not operating sightseeing operations (even if they are actually conducting tour flights). The FAA should also proceed with the public process leading to air tour management plans. Although the FAA may write the formal rules, the NPS should lead the analysis determining the impact of air tours on the parks. While the FAA has expertise in the area of safety, the NPS is substantially better able to analyze impact on park resources.

The Grand Canyon Chapter of the Sierra Club thanks you for considering our thoughts and recommendations.

Jim McCarthy
Designated Editor